IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CRIMINAL APPEAL NO.624 OF 2002

Shriniwas @ Sinu Hanmantu Harbandi .. Appellant
V/s
The State of Maharashtra .. Respondent

Ms.Smita R.Gaidhani for the Appellant.
Dr.F.R.Shaikh, Addl.P.P.for the State.

CORAM : DR.S.RADHAKRISHNAN, & SMT.R.S.DALVI, JJ.

DATE : 26th September, 2007.

JUDGMENT: (PER DR.S.RADHAKRISHNAN, J.)

1. By this Appeal, the Appellant is challenging the conviction u/s.302 of the Indian Penal Code and the sentence of life imprisonment.

2. The brief facts are that the accused was married to one Usha and they had a son Anup aged about 4 years. It is the case of the prosecution that due to constant quarrels, disagreements and illtreatment, the wife of the Accused viz.Usha had shifted to her mother Sakhubai’s residence alongwith her son Anup. The prosecution has alleged that the accused Shriniwas used to go on a number of occasions to his mother-in-law Sakhubai’s residence and try to forcibly take away his wife Usha & son-Anup, however Usha was very firm and was not inclined to go back due to such ill treatment by the Accused. It is also the case of the prosecution that the accused repeatedly threatened Usha that if she does

not come back, he will kill all of them. It is the case of the prosecution that on 2nd May, 1999 around 5.15 p.m. at Mauje Kamatghar, in Ashirwad Nagar, Narayan Chawl, Thane, wherein deceased Sakhubai was residing, the Accused Shriniwas entered and killed his wife-Usha, son-Anup and mother-in-law Sakhubai with knife blows.

3. The prosecution in support of its case had examined two eye-witnesses with regard to the aforesaid offences of murder viz.PW 2-Leela, the neighbour of the deceased, PW 3-Khaderao, and also the sister of Sakhubai one Sharda- PW 1 who resides nearby and who was the complainant, Dr.Kantilal who had conducted the post mortem on all the three deceased persons as PW 4, Sakhubai's husband Saktakumar as PW 5 and finally the Investigating Officer Jairam Gunjal as PW 6.

4. The prosecution had led the evidence of Sharda - PW 1, being the sister of Sakhubai and the evidence of PW 5-Saktakumar, being the husband of Sakhubai, in support of the motive i.e. the accused had been repeatedly threatening them and ultimately killed them on 2nd May, 1999. The prosecution has led evidence of two eye-witnesses viz.PW-2 Leela and PW-3 Khaderao who is living just opposite Sakhubai's residence and both the witnesses had witnessed the knife attack on Sakhubai and had also seen the accused running away from Sakhubai's residence with a sura (knife) in his hand and throwing

the same in a drain.

5. The learned Counsel for the Appellant took us through the evidence of Leela-PW 2, neighbour of Sakhubai who has clearly deposed that she had actually seen the Appellant accused assaulting the Sakhubai and running away. She has also categorically stated in her evidence that she saw Sura in his hand when he had assaulted Sakhubai. The said witness Leela categorically stated that between 4.00 to 4.30 p.m. she heard shrieking sound of "Amma Amma" and immediately she rushed towards her door, from where she could clearly see the Appellant Shriniwas assaulting Sakhubai with a Sura and running away. She has also categorically deposed that she saw Shriniwas throwing knife in a drain nearby while running away. Witness Leela has also stated that she alongwith one Lakshmibai then went near the door of Sakhubai and saw Sakhubai lying in a pool of blood.

6. Eye-witness Khaderao (who lives just opposite deceased Sakhubai’s residence) has also stated that around 4.00 p.m. he saw the accused Shriniwas assaulting Sakhubai. He has stated that when he was going towards his house he found many women collected near Sakhubai’s residence and from the gesturing he inferred that there was something serious, and at that time when he rushed to the door of Sakhubai’s house, he

saw Shriniwas was assaulting Sakhubai. He has clearly deposed that he saw Sakhubai's daughter-Usha and grand-son Anup lying on the floor and he felt that Sakhubai & Usha had died and the grand-son Anup was still alive. He has also deposed that the intestine of Sakhubai was exposed. The witness Khaderao has also corroborated that when he witnessed the same, he also saw PW-2 Leela, Sakhubai's neighbour had come to that place of incident. He has also described the length of the knife including the handle to be admeasuring 12 inches etc.

7. The learned Counsel for the Appellant took us through the evidence of PW-4 Dr.Kantilal who had conducted the post mortem of all the three deceased. We have perused all the three post mortem reports which have been duly proved and also the evidence of Dr.Kantilal. The post mortem report of deceased Sakhubai indicates that there were six injuries inflicted on her body. The said injuries mentioned in column 17 of the post mortem report are as under:-

i. Incise wound over sternal notch 1 x 1/2 transverse.

ii) Incise wound over right side of chest 2" below right nipple, oblique 1 x 1/2".

iii) Incise wound over right intraclavicular region oblique 1 x 1/2".

iv) Incise wound left arm 1" x 1/2" muscle deep two in number.

v) Incise wound 1/2" x 1/2" over left eblow muscle deep laterally.

vi) Incise wound over left infrascapular region 1" x 1/2" cavity deep.

. The cause of death of the deceased Sakhubai which is opined by Dr.Kantilal is the Cardiorespiratory failure due to Haemorrhagic shock due to injury to Heart due to sharp object.

8. Similarly, the post mortem report of deceased Usha indicates 15 injuries (mentioned in column 17 of the post mortem report), including the injuries on chest, abdomen, shoulders, arms, neck etc., and Dr.Kantilal has opined the cause of death to be the Cardio-respiratory failure due to Haemorrhagic shock due to injury to right & left lungs and the injuries mentioned in Column 17 & 20 of the Post Mortem Report due to sharp object.

9. The post mortem report of deceased Anup indicates various injuries (mentioned in column 17 of the post mortem report) on the vital parts of the body such as chest, abdomen etc., and Dr.Kantilal has opined the cause of death to be Cardio-respiratory failure due to Haemorrhagic shock due to injury to right kidney and the injuries mentioned in Column 17 of the Post Mortem Report due to sharp object.

10. The evidence of Dr.Kantilal shows that all the three deaths were homicidal deaths and were caused by a

sharp object/weapon like a knife.

11. The prosecution has also recovered the knife which was used by the Accused in the assault of the aforesaid three persons viz.deceased Sakhubai, Usha and Anup.

12. As far as motive part is concerned, the prosecution has examined Sharda-PW 1 (being the sister of deceased Sakhubai), who has categorically stated that Accused Shriniwas had come to deceased Sakhubai's residence 2/3 occasions prior to the aforesaid incident dated 2nd May, 1999. She has categorically deposed that the earlier to the aforesaid incident, Accused Shriniwas had tried to forcibly take away Usha & Anup and used to threaten them that they would be otherwise killed. She has stated that on his failure to succeed in the said mission to take Usha & Anup from the house of Sakhubai forcibly, the accused Shriniwas finally finished all the aforsaid three persons viz.Sakhubai, Usha & Anup. Witness Sharda has also deposed that she came to know the incident around 5.00 p.m. from the women in that area and she immediately rushed to the residence of Sakhubai and then came to know that accused Shriniwas had killed all the three persons. The prosecution has also examined deceased Sakhubai's husband viz.Saktakumar. Witness Saktakumar has deposed that on 30th April, 1999 around 2.00 p.m. (three days prior to the incident of murder), accused Shriniwas had come to their house and had

threatened his daughter-Usha with a very serious consequences, and at that time, accused Shriniwas had also tried to take away son-Anup without their permission but his daughter-Usha immediately snatched Anup from the grip of accused Shriniwas, whereupon, Accused Shriniwas had threatened Usha that they would be killed. Witness Saktkumar has also deposed that about 6.30 p.m.on 2.5.1999 he received a message of aforesaid incident of murders and when he reached his residence at 6.45 p.m. he saw the dead bodies of deceased Sakhubai, daughter-Usha and grandson-Anup.

13. The Investigating Officer Jairam Gunjal was examined as PW 6. He has deposed with regard to the entire investigation, conducting of post mortems and the recovery of knife used by the accused Shriniwas in the aforesaid assault.

14. Ms.Gaidhani, the learned Counsel appearing for the Appellant Accused has sought to contend that the timing given with regard to the assault i.e.4.00 or 5.00 p.m. does not appear to be correct as the Post Mortem Reports show that there were semi digested food in the intestines of all the three deceased persons. She has soght to contend that the killings must have taken place much prior to 4.00 p.m.. The learned Counsel for the Appellant has also contended that the deceased must have consumed food by 12.00 hours and by 4.00 to 5.00 p.m.

there could not have been semi-digested food in their intestines. She has also contended that the accused has been falsely implicated in the aforesaid case and this must be the handy work of some outsiders.

15. Perusal of the statement of the accused recorded u/s.313 of the Cr.P.C. shows that he has merely denied all the circumstances contending the same to be false. He has denied his presence at Sakhubai's residence on 2.5.1999 at 4.30 p.m. Even the accused has also denied the earlier incidents of threats being given on 30th April, 1999 as deposed by witness Saktakumar. In his statement, the accused Shriniwas has also denied of any quarrel with Sakhubai & Usha etc. He has stated that there was no quarrel between himself and Usha and that he had not tried to snatch Anup from Usha. In his statement, the Accused Shriniwas has also stated that all the witnesses has given false statements. He has not stated as to why all the witnesses had falsely deposed. Even in cross-examination, there is no suggestion as to why all these witnesses would falsely depose against the Appellant.

16. The learned APP appearing for the State has pointed out that both the eye-witnesses are neighbours and that they are not interested witnesses and they had no animus against the appellant accused. Both the witnesses have clearly corroborated each other with regard to the last

phase of attack on deceased Sakhubai. Both have categorically stated that they had seen accused Shriniwas attacking deceased Sakhubai with knife and thereafter running away and throwing the knife in the drain. The learned APP has pointed out that the evidence of both the eye-witnesses is fully supported by the medical evidence showing various injuries caused on the aforesaid three deceased persons by a sharp object like a knife. The learned APP has also pointed out that the Doctor who has conducted post mortems of all the three deceased persons has clearly opined that all the three deaths were homicidal and that the injuries were caused by a sharp object like knife. The learned APP has also pointed out that knife used by the accused Shriniwas in the aforesaid killing has also been recovered. He has pointed out that even the motive behind such a henious crime has been clearly established and corroborated by two witnesses viz.Sharda and Saktakumar. Under the aforesaid facts and circumstances, the learned APP has contended that this Court ought not to interfere in the aforesaid conviction and sentence, and should confirm the same.

17. After hearing the learned Counsel for the Appellant accused as well as the learned APP for the State and after perusal of the evidence and the record, we find the evidence of aforesaid two eye-witnesses Leela & Khaderao (being the neighbours of deceased Sakhubai) to

be cogent, consistent, trustworthy and reliable. Both the eye-witnesses have clearly deposed that they both saw accused Shriniwas assaulting deceased Sakhubai with a knife. Witness Khaderao has clearly deposed that he saw both Usha & Anup lying on the floor, and at that time when he saw Anup, he was still alive with those injuries. Inspite of a very rigorous cross-examination, both the witnesses have withstood the same firmly and have categorically stated that they had seen accused Shriniwas assaulting deceased Sakhubai and thereafter running away & throwing the knife in a drain while running away. The above eye-witness account clearly establishes the last phase of the attack specially in view of the fact that witness Khaderao rushed and saw Usha and Anup lying on the floor but Anup still alive. It means the witness Khaderao had seen the accused Shriniwas assaulting deceased Sakhubai and immediately prior to that, Usha and the youngster Anup had been assaulted by the Appellant. Both the above witnesses are independent witnesses.

18. The medical evidence of Dr.Kantilal and the post mortem reports of all the three deceased persons clearly indicate that there were several injuries on the vital parts of the bodies of the aforesaid three deceased persons caused by the sharp object like a knife, which had resulted in homicidal deaths. Even the knife used in the assault has been recovered. Over and above,

witness Khaderao has identified the accused in the Court, to be the same person who had assaulted deceased Sakhubai.

19. The arguments of the learned Counsel for the Accused Appellant that some semi digested food was found in the intestines of the dead bodies and therefore someone-else other than the accused appellant must have attacked the deceased persons at an earlier point of time, cannot be accepted as there is no material to infer such a probability. Over and above, it should be noted that the motive to cause death of all the three deceased persons has also been clearly established by the evidence of witnesses Sharda and Saktakumar.

20. Under the aforesaid facts and circumstances, we find no merit in the above appeal and we concur with the judgment and order of the learned Sessions Judge. Hence, the conviction is upheld, sentence is confirmed and the appeal is dismissed.

(SMT.R.S.DALVI, J.) **(DR.S.RADHAKRISHNAN, J.)**